

## CIVIL SERVICE COMMISSION MINUTES

October 6, 1999

A regular meeting of the Civil Service Commission was held at 2:30 p.m., in Room 310 at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Gloria Valencia-Cothran  
Mary Gwen Brummitt  
Gordon Austin  
Sigrid Pate

Absent were:

Roy Dixon

Comprising a quorum of the Commission

Support Staff Present:

Larry Cook, Executive Officer  
Ralph Shadwell, Senior Deputy County Counsel  
Selinda Hurtado-Miller, Reporting

**CIVIL SERVICE COMMISSION MINUTES**  
**October 6, 1999**

1:30 p.m.      CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation

2:30 p.m.      OPEN SESSION: Room 358, 1600 Pacific Highway,  
San Diego, California 92101

PRE-AGENDA CONFERENCE

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
6,14,15,18,20,21	12, 17	8	10,16

COMMENTS Motion by Mary Gwen Brummitt to approve all items not held for discussion; seconded by Austin. Carried.

**CLOSED SESSION AGENDA**  
**County Administration Center, Room 458**  
**(Notice pursuant to Government Code Sec. 54954.2)**  
**Members of the Public may be present at this**  
**location to hear the announcement of the**  
**Closed Session Agenda**

A. Commissioner Brummitt: Everett Bobbitt, Esq., on behalf of Deputy Marshal **Paul R. Parris** regarding alleged disciplinary action by the Office of the Marshal.

B. Commissioner Brummitt: Eric Siegler, Esq., on behalf of **Michael Wilbert** appealing an Order of Termination from the Sheriff=s Department.

C. Commissioner Valencia-Cothran: **Hans Gregerson** appealing an Order of Suspension from the Office of the Marshal.

**REGULAR AGENDA**

NOTE: Five total minutes will be allocated for input on Agenda Items unless additional time is requested at the outset and it is approved by the President of the Commission.

**MINUTES**

1. Approval of the Minutes of the regular meeting of August 18, 1999.

**Approved.**

## CONFIRMATION OF ASSIGNMENTS/REASSIGNMENTS

2. Commissioner Brummitt as hearing officer in the appeal of **Dianne Borgwardt** from an Order of Termination and Charges from the Assessor/Recorder/County Clerk.

**Confirmed.**

3. Commissioner Pate as hearing officer in the appeal of **Eric Oales** from an Order of Termination from the County Library.

**Confirmed.**

4. Commissioner Valencia-Cothran as hearing officer in the appeal of **Rafael Flores** from an Order of Suspension from the Sheriff=s Department.

**Confirmed.**

5. Everett Bobbitt, Esq., on behalf of **Mark Fuentes** appealing an Order of Termination from the Sheriff's Department. (See also No. 19 below)

RECOMMENDATION: Assign a Commissioner and conduct a pre-hearing conference to address all of Mr. Bobbitt's concerns.

**Staff recommendation approved. Commissioner Austin assigned as hearing officer.**

6. Alma Hernandez, S.E.I.U. Local 2028, on behalf of **Carole Howard**, requesting a Rule VII hearing regarding her "de facto suspension" from the Department of Planning and Land Use. As an alternative, an investigation under the provisions of Rule XI is requested.

RECOMMENDATION: Deny Requests

Alma Hernandez representing Employee stated that Ms. Howard was injured "on the job" in 1997. She was placed on work restrictions, which the Department had accommodated on a temporary basis. Employee contends that she was given a "de facto suspension".

Sandra Boyer for the Department stated that Employee has been deemed "permanent and stationary" and is currently suspended from her position until final job restrictions are received from the worker's compensation doctor, at which time the Department will review the work restrictions. The position is being held until that determination. Ms. Boyer informed the Commission that the worker's compensation issue is separate and distinct from any other matters between Employee and the Department.

It was determined that the Commission has no jurisdiction over worker's compensation issues, and therefore denied Employee's request for a Rule VII hearing, as well as an investigation under Rule XI.

**Motion by Pate to approve staff recommendation; seconded by Austin. Carried.**

## DISCIPLINES

7. Commissioner Brummitt: Everett Bobbitt, Esq., on behalf of Deputy Marshal **Paul R. Parris** regarding an alleged disciplinary action by the Office of the Marshal. Pre-hearing conference report to be presented.

### FINDINGS AND RECOMMENDATIONS:

The Marshal denied Employee's request for 10.5 hours of sick leave, and directed that it be converted to leave without pay (LWOP). The Marshal also determined that documents be placed in the Employee's personnel file to indicate that he was given a written warning. Commissioner Brummitt was assigned to conduct a pre-hearing conference to determine if the action against Employee was a form of discipline that is appealable to the CSC. Based on the findings and conclusions deduced from the pre-hearing conference, the following decision was presented:

1) An appointing authority's decision to deny sick leave may be grieved, but it is not a form of discipline which can be appealed to the Commission pursuant to Civil Service Rule VII; 2) written warnings from appointing authorities to employees are a form of discipline that may be grieved, but they are not appealable to the Commission as provided in Rule VII; 3) the Marshal's action to deny Employee's request for 10.5 hours of sick leave and replace it with LWOP, and his action to issue a written warning to Employee are not appealable to the Commission and are not within the Commission's jurisdiction; and the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Brummitt to approve Pre-Hearing Conference Report; seconded by Pate. Carried.**

8. Commissioner Brummitt: Eric Siegler, Esq., on behalf of **Michael Wilbert** appealing an Order of Termination from the Sheriff's Department.

### FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause I - incompetency (failure to successfully complete the patrol phase training program); Cause II - acts which are incompatible with and/or inimical to the public service. Employee has been employed as a Deputy Sheriff for approximately eleven years. The Department proved by a preponderance of evidence that Employee was incapable of competently performing the patrol duties of a Deputy Sheriff. There was established a clear and undeniable record of Employee's inability to satisfactorily and consistently perform the patrol duties of a Deputy Sheriff, which could likely impact the safety of Employee and others. The charges described in Causes One and Two in the Order of Termination and Charges were proven to be true.

Motion was made by Commissioner Brummitt to accept Findings and Recommendations; seconded by Commissioner Austin for discussion purposes only.

The CSC discussed in detail, with advice from County Counsel, Ralph Shadwell and Executive Officer, Larry Cook, the question of termination vs. demotion. Commissioner Austin felt that it was not "crystal clear"

as to whether the Department could have demoted Employee to a Correctional Deputy Sheriff classification in lieu of terminating Employee from the classification of Deputy Sheriff. The hearing officer in this matter had, in fact, questioned the Department whether it had considered this option. The Department replied that it did not consider this option. However, the question of whether the Department would have in fact considered demotion to a Corrections Deputy Sheriff status was not addressed. In this vein, the Commission opted to re-open the hearing to clarify whether or not the Department would consider putting Employee back to work as a Corrections Deputy Sheriff. The motion on the floor to accept Commissioner Brummitt's Findings and Recommendations was recalled, and a motion to re-open the hearing to clarify this point was introduced.

**Motion by Brummitt to re-open the hearing; seconded by Austin. Commissioner Brummitt assigned to re-hear this matter. Carried.**

9. Commissioner Valencia-Cothran: **Hans Gregerson** appealing an Order of Suspension from the Office of the Marshal.

#### FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause I - insubordination (repeated failure to submit requested work activity logs); Cause II - failure of good behavior. Employee is a legal Procedures Clerk II in the Office of the Marshal, having been employed with the Office approximately 8 years. In September 1998, Employee was assigned to the graveyard shift at his own request, and as is the practice of the Office, was required to submit Warrant Office work logs indicating the various activities completed during the shift. Although Employee argued that the Office's requirement that he provide work logs was in retaliation for his participation in the DIBBS program and for an affirmative action letter he penned, he failed to provide any competent evidence in support of this theory.

The hearing officer found that Employee is guilty of Cause One, insubordination and Cause Two, failure of good behavior. It is therefore ordered that the Order of a one (1) day Suspension be affirmed; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Valencia-Cothran to approve Findings and Recommendations; seconded by Pate. Carried.**

#### DISCRIMINATION

##### Complaints

10. **Jill Arrington**, Eligibility Technician, Health and Human Services Agency, alleging race discrimination by the Health and Human Services Agency. (See also No. 16 below)

**Withdrawn.**

11. **Michael Porter, Ph.D.**, Protective Services Worker I, Health and Human Services Agency, alleging disability discrimination by the Health and Human Services Agency.

RECOMMENDATION: Assign a Commissioner and concurrently appoint the Internal Affairs Office to conduct an investigation and report back.

**Staff recommendation approved. Commissioner Pate assigned as hearing officer.**

12. **Adrian Alcantara**, Court Service Officer, Office of the Marshal, alleging discrimination by the Office of the Marshal. (See also No. 17 below)

RECOMMENDATION: Assign a Commissioner and concurrently appoint the Internal Affairs Office to conduct an investigation and report back.

**Staff recommendation approved. Commissioner Valencia-Cothran assigned as hearing officer.**

#### **SELECTION PROCESS FINDINGS/COMPLAINTS**

##### **Findings**

13. **Sean Gallant** appeal of removal of his name by DHR from the employment list for Corrections Deputy Sheriff.

RECOMMENDATION: Ratify item No. 13. Appellant has been successful in the appellate process provided by Civil Service Rule 4.2.2.

**Ratified.**

##### **Complaints**

14. Singleton & Associates on behalf of **Julieann White**, appealing her non-selection for the classification of Deputy Probation Officer in the Probation Department.

RECOMMENDATION: Deny Request

Employee, in addressing the Commission, explained her professional background, outlining responsibilities, heavy workload, and an explanation of her latest employment frustrations. Her request was to remove the "letter of rejection" she believed was in her personnel file.

Cecelia Vallejo representing the Department explained that Employee does not have a "personnel file", only a background file, which does contain the letter of rejection. However, the Department stated that the background file is confidential and would not be accessible to future employers.

Since, it appears, the primary reason for Employee's non-selection was the result of the background investigation, Commissioner Austin proposed a selection process hearing whereby information from the background investigation can be obtained by going in camera.

**Motion by Austin to grant a selection process hearing; seconded by Pate. Carried. Commissioner Brummitt assigned as hearing officer.**

15. **Lawrence Klisura**, appealing the selection process for classification of Department Safety Coordinator/Safety Officer in the Department of Public Works.

RECOMMENDATION: Deny Request.

Mr. Klisura addressed the CSC, requesting Mr. Cook to hand out a 3 page background statement to the Commission. Employee read from this handout, intending to clarify his request for a selection process hearing.

Diane Jaynes, representing the Department explained that Mr. Klisura applied for the position, was rated by two impartial raters and was certified. However, he was not in the first 11 names sent to the Department and they subsequently selected someone from that first certified list to fill the position of Departmental Safety Coordinator/Safety Officer. The Department contends that the selection process was not violated.

**Motion by Brummitt to approve staff recommendation; seconded by Pate. Carried.**

16. **Jill Arrington**, Eligibility Technician, Health and Human Services Agency, appealing her non-selection for a reassignment opportunity within the Health and Human Services Agency. (See also No. 10 above)

**Withdrawn.**

17. **Adrian Alcantara**, Court Service Officer, Office of the Marshal, appealing his non-selection for promotion to Deputy Marshal in the Office of the Marshal. (See also No. 12 above)

RECOMMENDATION: Hold in abeyance pending the outcome of the discrimination investigation addressed in No. 12 above.

**Staff recommendation approved.**

## **INVESTIGATIONS**

18. **Charlotte Turner, R.N.**, requesting an investigation concerning the status of her employment with the Sheriff=s Department.

RECOMMENDATION: Grant Request

Tom Reed, representing the Sheriff's Department in this matter, stated that Employee was placed on Compulsory Leave approximately 1 ½ years ago and did not file a compulsory leave appeal with the CSC, or follow through with any other appeal request. The Department believes that the Worker's Compensation and Retirement issues stand alone, and are not under the jurisdiction of the Commission. Mr. Reed clarified the fact that Employee has not been denied retirement disability, but that the application is still pending.

Mr. Cook explained that Employee was in "no woman's land" and his recommendation to grant the investigation was based on moving this matter along for the benefit of both the County and the Employee.

Due to the fact that Ms. Turner's application for disability retirement has not been decided, the Commission denied the request.

**Motion by Austin to deny request for an investigation; seconded by Brummitt. Carried.**

## **LIBERTY INTEREST**

19. Everett Bobbitt, Esq., on behalf of **Mark Fuentes** requesting a Liberty Interest hearing concerning his termination from the Sheriff's Department. (See also No. 5 above)

RECOMMENDATION: Conduct a pre-hearing conference to address Mr. Fuentes' concerns about Liberty Interest, as well as failure of probation.

**Staff recommendation approved. Commissioner Austin assigned as hearing officer.**

20. **Blanca Ojeda** requesting a Liberty Interest hearing concerning her failure of probation in the Department of Probation.

RECOMMENDATION: Deny Request

Employee was employed with the Department of Probation for approximately 5 months, on a probationary status. Ms. Ojeda was failed on probation due to the departmental background check. Employee questioned the Department's reason for failing her on probation, as well as concerns for future employment possibilities.

Cecelia Vallejo representing the Department explained that the words "failed to meet standards of position" is the County-wide statement for a department failing an employee during the probationary period. There is, however, a letter in Employee's personnel file regarding the background check, but is not disseminated to prospective employers.

After clarification from County Counsel, DHR, and discussion among the Commission members, it was concluded that Ms. Ojeda's request did not meet the requirements of a Liberty Interest hearing.

**Motion by Austin to approve staff recommendation; seconded by Brummitt. Carried.**

## **OTHER MATTERS**

### **Performance Appraisals**

21. **Linda Davidson**, Senior Probation Officer, Department of Probation requesting the sealing of her performance appraisal for the period August 18, 1998 to June 9, 1999.



RECOMMENDATION: Grant Request

**Motion by Austin to deny request to seal performance appraisal;  
seconded by Pate. Carried.**

22. Fred Fox, S.E.I.U. Local 2028, on behalf of **Robin Friedman**, Health and Human Services Agency, requesting the sealing of her performance appraisal for the period of October 20, 1997 to October 20, 1998.

RECOMMENDATION: Grant Request

**Staff recommendation approved.**

**Extension of Temporary Appointments**

23. Public Works

A. 8 Civil Engineers (Mathew Brady, Nassrin Samii, Gregory Richards, Luis Perez, Gustavo Rios, Kenton Jones, Patricia Smith, Karel Shaffer)

B. 1 Drafting Technician II (Stephen Bleakney)

24. Health and Human Services Agency

A. 16 Residential Care Worker I's (Evangelina Pacheco, Kim Laurenzano, Margarita Goings, Mary Glass, Marlies Angermaier, Blanca Dominguez, Michelle Enriquez, Eleanor Loberia, Mary Owens, Darlene Uribe, Toni Volk, Claudette Wear, Matthew Donaldson, Brisbana Ramirez, Amy Cameon, Daniel Bailund)

B. 2 Residential Care Worker II's (Cathy Burns, Virginia King)

C. 3 Residential Care Worker Trainees (Eleanor Sipperly, Elena Insunza, Freddie Downs)

D. 1 Psychiatric Technician (Marlene Mosher)

E. 1 Principal Administrative Analyst (Debra McRae)

F. 1 Construction & Services Worker I (Ernesto Lorenzo)

25. Agriculture, Weights & Measures

2 Insect Detection Specialist I's (Steven Robinson, Dianna Wennerstrom)

RECOMMENDATION: Ratify items No. 23 through 25.

**Item Nos. 23 through 25 ratified.**

26. Public Input.

ADJOURNMENT: 4:45 p.m.

**NEXT MEETING OF THE CIVIL SERVICE COMMISSION WILL BE November 3, 1999.**